DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
825 North Capitol Street, NE, Suite 4150
Washington, DC 20002-4210

DISTRICT OF COLUMBIA DEPARTMENT OF FIRE AND EMERGENCY MEDICAL SERVICES Petitioner, v. D.C. PUBLIC SCHOOLS – WOODSON SENIOR HIGH SCHOOL Respondent	Case Nos.: FE-I-05-W100119 FE-I-05-W100138

FINAL ORDER

On September 19, 2005, the Government served a Notice of Infraction (No. W100119), charging Respondent D.C. Public Schools ("DCPS") – Woodson Senior High School ("Woodson"), with eight counts of violating 12H DCMR F-110.1.3 by having padlocks on exit doors on September 17, 2005. This Notice stated that the alleged infractions occurred at Woodson, 5500 Eads Street, N.W., and requested fines in the total amount of $8,000. Respondent failed to file an answer to Notice No. W100119. Therefore, on October 28, 2005, this administrative court issued a Notice of Default, subjecting Respondent to a penalty of $8,000 and directing the Government to serve a second Notice of Infraction. On November 10, 2005, the Government served the second Notice (No. W100138), notifying Respondent of the proposed fine of $8,000 and penalty of $8,000, totaling $16,000.

These cases were consolidated for hearing with Case Nos. W100023 and W100139, in which the Government charged the DCPS – Calvin Coolidge Senior High School ("Coolidge") with unrelated infractions under the D.C. Fire Code. Following an extensive procedural history,

Respondent in these cases ultimately filed a timely answer with a plea of Deny to the second NOI (W100138).[1] On April 28, 2006, these cases were severed from the cases involving Coolidge, and continued for a later hearing. A separate Final Order has been issued in the Coolidge cases.

An evidentiary hearing in these cases (W100119 and W100138) was held on May 26, 2006. Fire Inspector Mark Davis appeared on behalf of the Government. Michael D. Levy, Esq., appeared on behalf of Respondent.

Based upon the testimony of the witnesses, my evaluation of their credibility, and the exhibits admitted into evidence, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

A. Specific Findings

Respondent is an entity of the District of Columbia Government operating the public school system, and in this capacity Respondent manages the building at Woodson. On September 17, 2005, a fire alarm was activated at Woodson, and emergency fire personnel responded. A fire had been started in a trash can on the second floor of the building while school was in session. Fire Inspector Cheryl Hunter (the "Inspector") reported to the school to assist in evacuating the building and to inspect the premises.

[1] At one point, a Final Order of Default was entered as to all four cases. However, that Final Order was vacated after Respondent filed a Motion for Modification showing that it had timely filed responsive pleadings in all cases.

Woodson has a front entrance at the plaza level, and a second exit at the lower ground level leading to the parking lot. There are 64 exit doors on the building in total, 48 on the ground level and 16 on the plaza level. On the lower ground level, there is a bank of eight doors that are located next to the gymnasium, and this is the bank of doors that leads directly to the parking lot.

The Inspector arrived at Woodson as people were evacuating the building. She initially entered at the plaza level, where she met with the Principal, Aona Jefferson. Ms. Jefferson and the Inspector then went downstairs to the ground level. The Inspector noticed that some of the eight doors by the gymnasium were padlocked. In all, four of the eight doors were padlocked and therefore inaccessible to students and staff trying to exit the building. This presented a dangerous condition because people could get jammed in at the blocked doors or get hurt trying to redirect toward the doors that were accessible. On September 17, 2005, no one was injured at the padlocked doors.

At that time, Principal Jefferson had ordered security staff to padlock all of the exit doors leading to the parking lot on the ground level after school hours, because many of the doors were rusted, warped or otherwise in disrepair. The padlocks were used to secure the doors from entry by vandals. However, security staff was required to remove the padlocks from the doors before students arrived for school in the morning. On this occasion, security staff had left padlocks on four of the doors, in violation of school policy. Principal Jefferson had also made numerous repair requests to DCPS, requesting replacement of the damaged doors. Her most recent repair request was made in August 2005.

After the fire emergency was resolved, the Inspector visited Ms. Jefferson in the Principal's Office and issued Notice of Infraction No. W100119 to her, charging Respondent

with eight violations of the D.C. Fire Code for having eight padlocked doors. Ms. Jefferson then forwarded this Notice of Infraction to DCPS officials to file an answer to the charges and to take appropriate action. No one ever filed an answer to this first Notice of Infraction. The defective doors were repaired the next day by DCPS, and the padlocks were removed. The Inspector never went back to Woodson after that to re-inspect the doors near the gymnasium.

B. Assessment of Credibility

The main factual dispute in this case concerns the number of doors that were padlocked when the Inspector inspected the ground level of Woodson. The Inspector testified that she saw eight doors that were padlocked. Ms. Jefferson contended that this was impossible because the bank of doors at issue only had eight doors total, and not all of them were padlocked. The Inspector agreed that some doors were not padlocked, but she insisted that there were eight doors that were.

In assessing the credibility of the witnesses, I have considered a number of factors. On one hand, the Inspector had no apparent self-interest in maximizing the extent of the infractions, while Ms. Jefferson as Principal could have had motivation to minimize them. Nevertheless, I found Ms. Jefferson's account to be more reliable for several reasons: (1) the Inspector had no clear recollection of many details of the investigation, and she had to have her memory refreshed by her report, Petitioner's Exhibit ("PX") 103 (not offered into evidence); (2) conversely, Ms. Jefferson recited the experience in great detail; (3) Ms. Jefferson appeared to be very familiar with the layout of the building and the condition of the doors, and she had worked in the building for approximately 30 years as a teacher, assistant principal, and principal; and (4) the Inspector

never provided any clear explanation of how many doors were located by the parking lot, to refute the testimony of Ms. Jefferson.

Notwithstanding Respondent's claim that it had no notice as to which doors were at issue, the testimony of both witnesses showed agreement as to the location of the padlocked doors. Ms. Jefferson's testimony convinced me that there were eight doors located next to the gymnasium and that some of the doors were not padlocked. I have found that four of the doors were padlocked, as this was Ms. Jefferson's best guess as to the actual number.

III. Conclusions of Law

The Government has charged Respondent with eight violations of 12H DCMR F-110.1.3, by maintaining padlocked exit doors. 12H DCMR F-110.1.3 provides:

> Whenever the code official or the code official's designated representative finds in any structure or upon any premises dangerous or hazardous conditions or materials, the code official shall order such dangerous conditions or materials to be removed or remedied in accordance with the provisions of this code. When necessary to secure safety in addition thereto, the code official shall be authorized to prescribe limitations on the handling and storage of materials or substances or upon operations that are liable to cause fire, contribute to the spread of fire, or endanger life or property. Dangerous conditions or materials include, but are not limited to, the following:
>
> 3. Obstruction to or on fire escapes, stairs, passageways, doors or windows, liable to interfere with the egress of occupants or the operation of the Fire Department in case of fire.

The Government has proven in part that Respondent violated this regulation on September 17, 2005 by having padlocks on four fire exit doors, thereby preventing egress from the building through those doors. Since there was a fire emergency, occupants were actually impacted by the condition of the doors, although fortunately no one was injured as a result.

Since I have found that only four doors were padlocked, I will dismiss four of the charges and uphold the other four.

A violation of 12H DCMR F-110.1 is a Class 1 violation, subject to a fine of $2,000 for a first offense occurring after May 27, 2005. 16 DCMR 3401.1(h); 16 DCMR 3400; 16 DCMR 3201.1(a)(1). The Government only sought a fine of $1,000 per violation, and I will consider that amount. OAH Rule 2825.1 (the administrative court can only grant the relief requested by the moving party). Respondent is subject to a fine of $4,000.

Although Respondent corrected the infraction within one day, this mitigating factor is counter-balanced by the aggravating factor that the unsafe condition was present while school was in session and a fire emergency occurred, thereby creating a severe hazard to the life and safety of the school children and faculty. In addition, I note that Principal Jefferson was very conscientious about protecting the safety of the children by seeking repair of the damaged doors, but DCPS ignored the repair requests until the fire alarm was activated and Respondent was cited for the infractions. Consequently, I will impose the full fine of $4,000 for the four charges that were proven.

The Civil Infractions Act, D.C. Official Code §§ 2-1802.02(f) and 2-1802.05, provides that there must be "good cause" for a respondent's failure to answer a Notice of Infraction within 20 days of the date of service by mail. If there is not, the statute requires that a penalty equal to the amount of the proposed fine be imposed. D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f).

Respondent offered no explanation for its failure to answer Notice of Infraction W100119. Ms. Jefferson testified that she forwarded this Notice to DCPS, but no one followed up by filing an answer.

For these reasons, Respondent is liable for the statutory penalty. Since the Government requested a fine in the amount of $8,000, I will impose that amount as the statutory penalty, in addition to the $4,000 fine.[2]

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is this 5th day of June 2006:

ORDERED, that Respondent shall pay the amount of **TWELVE THOUSAND DOLLARS ($12,000)** in accordance with the attached instructions; and it is further

ORDERED, that if the Respondents fail to pay the above amount in full within 35 calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ % **or ONE HUNDRED EIGHTY DOLLARS ($180)** per month or portion thereof, starting 35 calendar days after the mailing date of this Order, pursuant to D.C. Official Code § 2-1802.03(i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Official Code

[2] I have previously determined that the answer to Notice of Infraction W100138 was timely filed under the extended deadlines granted to Respondent. Therefore, Respondent is not liable for any *additional* penalty for filing an untimely answer to the second Notice of Infraction.

§ 2-1802.03(f), the placement of a lien on real and personal property owned by Respondent pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondents' business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7); and it is further

ORDERED, that the appeal rights of any party aggrieved by this Order are stated below.

June 5, 2006

___/s/_____
Paul B. Handy
Administrative Law Judge